

BUREAU OF LAW

MEMORANDUM

Corp. Tax Determinations
A-2
Boss-Linco Lines, Inc.

TO: Commissioners Murphy, Palestin, Macduff

FROM: E. H. Best, Counsel

SUBJECT: Proposed Determinations:
Rochester Gas and Electric Corporation
P. J. Garvey Carting and Storage, Inc.
Boss-Linco Lines, Inc.

The issue raised herein is whether or not the distribution by the taxpayer of capital stock or exchange of stock under a plan of recapitalization of the taxpayer, resulting in either instance, in a transfer of amounts from earned surplus to capital, constitutes a dividend for franchise tax purposes under Section 186 of the Tax Law. (Rochester Gas and Electric Corporation), or Section 183 thereof, (P. J. Garvey Carting and Storage, Inc. and Boss-Linco Lines, Inc.)

During the periods under review, Rochester Gas and Electric Corporation and P. J. Garvey Carting and Storage, Inc. declared and issued stock dividends of shares of common stock and transferred sums of money from surplus to capital in connection with such issues. However, with respect to Boss-Linco Lines, Inc., the transfer of earned surplus to capital resulted from an exchange of stock under a plan of recapitalization of a total value of \$22,400 into other stock of a total value of \$317,500, the difference being transferred from earned surplus to capital.

I am of the opinion that distribution of stock dividends on the basis of a transfer of earned surplus to capital are dividends for franchise tax purposes under Sections 182, 183 and 186 of the Tax Law, in accordance with the opinions expressed by me in letters to the taxpayer's attorneys dated March 22, 1963, and February 9, 1965, copies of which letters are hereto attached. I am further of the opinion that the transfer from earned surplus to capital with respect to the plan of recapitalization in the matter of Boss-Linco Lines, Inc. also constitutes a dividend for franchise tax purposes. Accordingly, I am in agreement with the proposed determinations sustaining the imposition of additional franchise taxes.

Kindly return the files after disposition.

E. H. Best

Counsel

MS:lb
December 7, 1965 (Dec. 13, 1965)

STATE OF NEW YORK

THE STATE TAX COMMISSION

In the Matter of the Application

of

BOSS-LINCO LINES, INC.

for revision or refund of franchise
tax assessed under Section 183 of
Article 9 of the Tax Law for the tax
year begun January 1, 1963, based on
the operations for the calendar
year 1962.

Boss-Linco Lines, Inc., the taxpayer herein, having
filed application for revision or refund of franchise tax
assessed under Section 183 of Article 9 of the Tax Law for
the tax year begun January 1, 1963, and a hearing having
been held in connection therewith at the office of the State
Tax Commission in Albany, New York, on August 24, 1965,
before William F. Sullivan, Senior Tax Administrative Super-
visor of the Corporation Tax Bureau of the Department of
Taxation and Finance, at which hearing James A. Meyer,
treasurer and assistant secretary of the taxpayer, appeared
personally and testified, together with Ralph J. Gregg, Esq.,
of Counsel, and the record having been duly examined and
considered by the State Tax Commission,

It is hereby found:

- (1) That the taxpayer was incorporated under the
laws of New York State on or about October 28, 1947;
- (2) That the tax was reaudited and restated, as
follows:

Cash dividends	\$ 38,775	
Stock dividend	97,100	
Total dividends	<u>\$135,875</u>	= 40.86466% x .00025% = 10.216 Mills
Par Value Com. Stock	\$332,500	
Apportionment %	85.7868%	
New York base	\$285,241.11	
Rate	<u>10.216</u>	Mills
Tax	\$ 2,914.02	

(3) That the tax was reaudited and restated on June 1, 1965, and application for revision or refund was filed on June 23, 1965;

(4) That in 1962, under a plan of recapitalization, the issued capital stock of 1500 shares of common stock and 704 shares of preferred stock (all having \$100.00 par value, and a total value of \$220,400) were exchanged by the shareholders for 105,000 shares of Class A stock and 212,500 shares of Class B stock (all having \$1.00 par value, and a total value of \$317,500); that in connection with the exchange of stock \$97,100.00 was transferred from earned surplus to capital.

Upon the foregoing findings and upon all the evidence presented, it is hereby

DETERMINED:

(A) That the exchange of stock under the plan of recapitalization of the taxpayer and the transfer of \$97,100.00 from earned surplus to capital constitute a dividend for franchise tax purposes under Section 183 of the Tax Law;

(B) That the tax as set forth in (2) above is affirmed as assessed;

(C) That the aforesaid tax does not include any tax or other charges which are not legally due.

Dated: Albany, New York

this 28th day of February, 1966.

THE STATE TAX COMMISSION

Joseph H. Murray

COMMISSIONER

Donald A. ...

COMMISSIONER

James A. ...

COMMISSIONER